

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

Larry M. Combs,

Plaintiff,

v.

Sirius XM Radio Inc.,

Defendant.

:
: Civil Action No.: 7:15-cv-37
:

:
:
:
:
: **COMPLAINT**
: **JURY TRIAL DEMANDED**
:
:
:

For this Complaint, the Plaintiff, Larry M. Combs, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Plaintiff resides in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Larry M. Combs ("Plaintiff"), is an adult individual residing in St. Pauls, North Carolina, and is a "person" as the term is defined by 47 U.S.C. § 153 (39).

4. Defendant Sirius XM Radio Inc. ("Sirius"), is a New York business entity with an address of 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

FACTS

5. In October 2014, Sirius began calling Plaintiff's cellular telephone, number [910-XXX-6527] in an attempt to solicit its services.

6. Sirius called Plaintiff by using an automatic telephone dialing system ("ATDS") and by using an artificial prerecorded voice.

7. When Plaintiff answered the calls from Sirius, he was met with a prerecorded message advising Plaintiff to renew his services with Sirius.

8. During a live conversation with Sirius in late October 2014, Plaintiff advised Sirius that he was not interested in its services, and to cease all calls.

9. Nevertheless, Sirius continued calling Plaintiff using a prerecorded voice placing around thirty (30) calls thereafter.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – 47 U.S.C. § 227, et seq.

10. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. After Plaintiff revoked consent, Sirius continued to contact Plaintiff by means of automatic telephone calls or prerecorded messages at a cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

12. Sirius continued to place automated calls to Plaintiff's cellular telephone after being advised to stop calling and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

13. The telephone number called by Sirius was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

14. The calls from Sirius to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

15. Sirius’ telephone system has the capacity to store numbers in a random and sequential manner.

16. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
2. Punitive damages; and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: February 17, 2015

Respectfully submitted,

By: /s/ Ruth M. Allen

Ruth M. Allen, Esq.

Bar Number: 34739
7413 Six Forks Road, Suite 326
Raleigh NC 27615
Email: rallen@leberglaw.com
Telephone: (855) 301-2100 Ext. 5536
Facsimile: (888) 953-6237
Attorney for Plaintiff

Of Counsel To:

Sergei Lemberg, Esq.
LEMBERG & ASSOCIATES L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424